IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 388 of 2007()

AGAINST THE ORDER DATED 26/07/2006 IN CRMP.4093/06 IN ST.755/1991 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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PETITIONER: PETITIONER/ACCUSED

G.PONNAMMA AMMA, W/O.LATE K.MADHAVAN PILLAI, PROPRIETRIX, DEVI CASHEW FACTOR,PUTHOR P.O KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SMT.BINITHA JAMES

RESPONDENTS: RESPONDENT/COMPLAINANT

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1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. EMPLOYEES STATE INSURANCE CORPORATION, REPRESENTED BY THE REGIONAL DIRECTOR,REGIONAL OFFICE (KERALA) BANCHADEEP BHAVAN,TRISSUR.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 388 OF 2007

Dated this the 15th day of February, 2007

ORDER

The petitioner - a woman, aged about 86 years, who faces a prosecution under Sec.85 read with Sec.40 of the E.S.I. Act, has come to this Court complaining about the rejection of her prayer for exemption from personal appearance passed by the learned Chief Judicial Magistrate, Thrissur.

2. The petitioner had appeared before the learned Magistrate. She was enlarged on bail. She had earlier come to this Court with a prayer that the proceedings against her may be kept in abeyance. Accordingly, Annexure-A2 order was passed by another Bench of this Court directing that the matter may be kept in abeyance until Employees Insurance Court takes a decision in the matter. The decision has been rendered by that court against the petitioner. Thereafter, the petitioner did not appear and the learned Magistrate issued a non-bailable warrant of arrest to procure her presence. At that stage, the petitioner appeared before the learned

Magistrate through her counsel. She submitted that she is sick and aged. She has suffered a stroke. In these circumstances, it was prayed that the personal appearance of the accused may be dispensed with. The learned Magistrate has proceeded to pass the impugned order. The prayer was rejected on the ground that she had taken bail once and had absconded thereafter. It was further noted that she was not present even on the day when the application was made. The reasons shown, according to me, are not sufficient or satisfactory to refuse the prayer for exemption from personal appearance considering the peculiar facts and circumstances of this case.

3. Mercy is the indispensable quality of justice and the prayer of the petitioner – 86 year old woman who is sick also, for exemption from personal appearance should not have been rejected by the learned Magistrate on such reasons.

4. Unless absolutely essential, it is not necessary in a case like this to insist on the personal presence of the petitioner/ accused.

5. In the result:

(i) This Crl.M.C. is allowed.

(ii) The impugned order (Annexure-A5) is set aside.

(iii) The learned Magistrate is directed to permit the petitioner to be represented by a counsel and to exempt her from personal appearance. Her personal presence shall not be insisted unless it be absolutely essential hereafter at any stage of the proceedings. Reasons must be shown by the learned Magistrate to insist on such personal appearance of the petitioner.

(iv) Cancellation of the bail bond and the steps taken against the sureties shall also stand set aside.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge